THE CHAIRMAN: The gentleman will state it.

MR. HARRIS: Would not the point of order raised by the gentleman go to the entire paragraph?

THE CHAIRMAN: If the gentleman from Pennsylvania so made the point of order. . . .

MR. HARRIS: Mr. Chairman, I asked the gentleman from Pennsylvania a moment ago if his point of order was to the proviso only and I understand the gentleman to say that it was.

MR. FLOOD: That was true. That was the point of order I made, but I have no objection to making a subsequent point of order this time to make a point of order against the entire paragraph.

MR. [CHARLES A.] WOLVERTON [of New Jersey]: Mr. Chairman, so that there may be no misunderstanding about the situation, I make a point of order against the entire paragraph.

THE CHAIRMAN: Does the gentleman from New York concede the point of order to the entire paragraph?

MR. FLOOD: Mr. Chairman, I make a point of order against the entire paragraph, in view of the discussion which has just taken place.

MR. MCGRATH: Mr. Chairman, I concede the point of order. . . .

THE CHAIRMAN: The point of order now takes in the entire paragraph beginning on page 35 and ending at line 16, page 36. . . .

And the gentleman from New York [Mr. McGrath] concedes the point of order. The point of order is sustained.

§ 36. Changing Prescribed Methods of Allocation or Distribution of Funds; Mandating Expenditures

Generally, if a provision in an appropriation bill would require an allocation or distribution of appropriated funds that is contrary to an express legislative formula for apportionment of the funds, it is not permitted. Thus, it is held that an amendment to a general appropriation bill which mandates a distribution of funds therein in contravention of an allocation formula in existing law and which interferes with an executive official's discretionary authority under that law is in violation of Rule XXI clause 2. (See § 36.16, infra.) On the other hand, amendments or provisions in bills have been permitted which have been drafted simply as negative restrictions or limitations on the use of funds. Such limitations may affect the allocation of funds as contemplated in existing law, but do not explicitly change a statutory formula for distribution.[18] Exam-

18. In one instance, where existing law authorized an appropriation of $600,000,000 for the fiscal year and provided that of the amount actually appropriated, allotments to the various states should be computed by a formula, the factors of which were to

ples may be found in those sections of this chapter relating to "permissible limitations on the use of funds."

Theoretically, if an authorizing statute provided that a particular percentage of total funds would be allocated to each of several specified areas, a purported limitation which eliminated funds for one of those areas would constitute legislation in that it changed a prescribed formula. This result, however, does not clearly emerge from the precedents.

be state population, per capita income therein, the amount appropriated and the amount authorized, a provision in the appropriation bill H.R. 13111 (for the Departments of Labor and Health, Education, and Welfare) specifying that none of the funds used therein should be available for making allotments on a basis in excess of $500,000,000, thus changing one of the legislatively established figures in the authorized formula, was nevertheless held in order as a limitation, the argument not having been explicit on this crucial point. 115 CONG. REC. 21471, 91st Cong. 1st Sess., July 30, 1969. (For an example of a similar limitation based on a prior year's appropriation, see 118 CONG. REC. 21104, 92d Cong. 2d Sess., June 15, 1972 [H.R. 15417].) But the ruling today would arguably be different, on the basis that the provisions did in fact change one part of a legislatively established formula. See also § 77.2, infra, in which an amendment to a paragraph of an appropriation bill providing that no part of the funds therein contained shall be distributed to states on a per capita income basis was held to be a proper limitation restricting the use of funds and in order.

General Rule

§ 36.1 It is not in order in a general appropriation bill to direct that certain funds therein shall be distributed without regard to the provisions of the authorizing legislation.

On June 15, 1972,[19] during consideration in the Committee of the Whole of a general appropriation bill (H.R. 15417), a point of order was raised against the following amendment:

MR. [SIDNEY R.] YATES [of Illinois]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Yates: On page 22, line 4, change the period to a semicolon and add the following: "Provided that the funds herein appropriated for bilingual education under the Bilingual Education Act shall be distributed in accordance with the authority contained in Section 703(b) of said Act requiring that the Commissioner shall give highest priority to states and areas within states having the greatest need for programs under the Act, and that

19. 118 CONG. REC. 21131, 92d Cong. 2d Sess.

such priority shall take into consideration the number of children of limited English-speaking ability between the ages of three (3) and eighteen (18) in each state; and provided further that such distribution of funds shall be made [without regard to the provisions of Section 704(a) of the Bilingual Education Act that distribution be 'from families (A) with incomes below $3,000 per year, or (B) receiving payments under a program of aid to families with dependent children under a State plan approved under title IV of the Social Security Act', and of Section 704(c) of the Bilingual Education Act that distribution be 'from families (A) with incomes below $3,000 per year, or (B) receiving payments under a program of aid to families with dependent children under a State plan approved under title IV of the Social Security Act.'"]

MR. [DANIEL J.] FLOOD [of Pennsylvania]: Mr. Chairman, I make a point of order against the amendment.

THE CHAIRMAN:[20] Does the gentleman desire to be heard on the point of order?

MR. FLOOD: Yes, Mr. Chairman, and very briefly.

Mr. Chairman, it is very clear and I read now from Cannon's Procedures in the House of Representatives, page 46, which reads as follows:

> Any deviation however slight from the text of existing law.

It says that no deviation however slight. This is certainly that, if you heard it as I did. I had a copy of the amendment and I read it carefully in some detail.

Mr. Chairman, I could not make it any plainer if I wrote it myself.

THE CHAIRMAN: Does the gentleman from Illinois desire to be heard on the point of order?

MR. YATES: Yes, Mr. Chairman.

Mr. Chairman, I conceive of this amendment as being a limitation on an appropriation bill in determining the manner in which funds be spent. I, therefore, think it is in order.

THE CHAIRMAN: The Chair is ready to rule. The amendment does not restate existing law but changes existing law. Therefore, it becomes legislation on an appropriation bill, and the Chair sustains the point of order.

Mandating Spending Levels

§ 36.2 Language in an appropriation bill mandating a certain allotment of funds appropriated therein was ruled out as legislation on an appropriation bill.

On Mar. 29, 1960,[1] during consideration in the Committee of the Whole of a general appropriation bill (H.R. 11390), a point of order was raised against the following provision:

> DEFENSE EDUCATIONAL ACTIVITIES
>
> For grants, loans, and payments under the National Defense Education Act of 1958 (72 Stat. 1580–1605), $171,000,000, of which $44,000,000 shall be for capital contributions to student loan funds and loans for non-Federal capital contributions to stu-

20. Chet Holifield (Calif.).

1. 106 CONG. REC. 6862, 6863, 86th Cong. 2d Sess.

dent loan funds, of which not to exceed $1,000,000 shall be for such loans for non-Federal capital contributions; $57,750,000 shall be for grants to States and loans to nonprofit private schools for science, mathematics, or modern foreign language equipment and minor remodeling of facilities and for grants to States for supervisory and other services, [but allotments pursuant to section 302 or 305 of such Act for the current fiscal year shall be made on the basis of the maximum amounts authorized to be appropriated under section 301 of such Act;] $9,000,000 shall be for grants to States for area vocational education programs; and $15,000,000 shall be for grants to States for testing, guidance, and counselling: *Provided further,* That no part of this appropriation shall be available for the purchase of science, mathematics, and modern language teaching equipment, or equipment suitable for use for teaching in such fields of education, which can be identified as originating in or having been exported from a Communist country, unless such equipment is unavailable from any other source. . . .

MR. [H. R.] GROSS [of Iowa]: Mr. Chairman, a point of order.

THE CHAIRMAN:[2] The gentleman will state it.

MR. GROSS: Mr. Chairman, I make a point of order against the language on page 17, line 19, which reads as follows:

> But allotments pursuant to section 302 or 305 of such act for the current fiscal year shall be made on the basis of the maximum amounts authorized to be appropriated under section 301 of such act.

I make the point of order that this language constitutes legislation on an appropriation bill.

THE CHAIRMAN: Does the gentleman from Rhode Island care to be heard on the point of order?

MR. [JOHN E.] FOGARTY [of Rhode Island]: Mr. Chairman, I am in no other position than to concede that it is legislation on an appropriation bill; but it will change the basic effect of the act, throw it out of control. However, if the gentleman insists on his point of order, there is nothing else I can do.

MR. GROSS: I insist on the point of order, Mr. Chairman.

THE CHAIRMAN: The gentleman from Iowa insists on his point of order.

The point of order is sustained.

Requiring a Certain Apportionment of Funds

§ 36.3 To a general appropriation bill including funds for educational programs authorized by law, an amendment denying the use of such funds until the Commissioner of Education makes an apportionment thereof contrary to the formula prescribed by existing law was held to impose additional duties on the Commissioner and to change existing law and was thus ruled out as legislation.

On June 26, 1968,[3] during consideration in the Committee of the

2. Eugene J. Keogh (N.Y.).

3. 114 CONG. REC. 18894, 18895, 90th Cong. 2d Sess.

Whole of the Departments of Labor and Health, Education, and Welfare appropriation bill (H.R. 18037), a point of order was raised against the following provision:

MR. [ALBERT H.] QUIE [of Minnesota]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Quie: On page 13, line 24, strike the word "*Provided*" and all the language that follows through the word "grants" on page 14, line 3, and insert in lieu thereof the following: ["*Provided*, That no part of this appropriation shall be made available to any local educational agency in any State from funds appropriated to carry out such title II for the fiscal year 1969 until there has been made available from this appropriation to each local educational agency in the State in whose schools the number of children counted under section 103(a)2 of such title II exceeds 25 per centum of the total enrollment in such schools an amount at least equal to the amount made available to it for the fiscal year 1968 from funds appropriated to carry out such title:] *Provided further,* That the Commissioner shall make no part of this appropriation available to any local educational agency which fails to give priority in carrying out programs under such title II to schools serving school attendance areas of greatest need:".

MR. [DANIEL J.] FLOOD [of Pennsylvania]: Mr. Chairman, I reserve a point of order against the amendment. I propose to make a point of order that this is legislation on an appropriation bill.

THE CHAIRMAN:[4] The gentleman reserves a point of order. . . .

MR. FLOOD: Mr. Chairman, I must insist upon my point of order. This amendment obviously and clearly changes the entire system of allocations. It attempts to create a formula. If ever I have seen legislation on an appropriation bill, this is it.

Mr. Chairman, I insist upon my point of order.

THE CHAIRMAN: Does the gentleman from Minnesota desire to be heard on the point of order?

MR. QUIE: Yes, Mr. Chairman.

My amendment is a limitation on the payment of $1,064,000,000. It is a similar limitation to that placed on the expenditure in other parts of the bill; for instance, pages 13 and 14, as the provisos. Also, as to the impact aid, we see some of the same kinds of limitations, where there could be no reduction for category A students but the reduction all would have to be for category B students.

My amendment is written in the same way, as a limitation on payments under this bill.

THE CHAIRMAN: The Chair is ready to rule.

The Chair has had an opportunity to read the amendment and has listened to the arguments for the point of order and against the point of order.

The amendment offered by the gentleman from Minnesota [Mr. Quie] provides that:

No funds may be made available from this appropriation until there has been made available from this appropriation (to certain local edu-

4. Chet Holifield (Calif.).

cational agencies) an amount at least equal to the amount made available to it in fiscal 1968.

The Chair has examined the amendment, the bill, and the provisions of title II of the act of September 30, 1950, as amended. The effect of the amendment is to prohibit the Commissioner of Education from making any payments to any State from this appropriation until there is an amount made available to local educational agencies in certain States at least equal to that provided last year.

The Chair feels that to make an appropriation contingent upon certain actions to be taken by the Commissioner which impose additional duties that are contrary to the apportionment formula in existing law constitutes legislation on an appropriation bill, in violation of rule XXI, clause 2.

The Chair therefore sustains the point of order.

Permitting Reapportionment of Unused Funds

§ 36.4 In an appropriation bill providing funds for the Office of Education, language "[t]hat the amount of allotment which States and Territories are not prepared to use may be reapportioned among other States and Territories applying therefor for use in the programs for which the funds were originally apportioned", was conceded and held to be legislation and not in order.

On Mar. 29, 1957,[5] during consideration in the Committee of the Whole of the Departments of Labor and Health, Education, and Welfare appropriation bill (H.R. 6287), a point of order was raised against the following provision:

The Clerk read as follows:

OFFICE OF EDUCATION

Promotion and further development of vocational education: For carrying out the provisions of section 3 of the Vocational Education Act of 1946, as amended (20 U.S.C., ch. 2), and section 202 of said act (70 Stat. 925), section 4 of the act of March 10, 1924 (20 U.S.C. 29), section 1 of the act of March 3, 1931 (20 U.S.C. 30), the act of March 18, 1950 (20 U.S.C. 31), including $4 million for extension and improvement of practical nurse training, $33,442,081: *Provided*, That the apportionment to the States under section 3 (a), (1), (2), (3), and (4) of the Vocational Education Act of 1946 shall be computed on the basis of not to exceed $29,267,081 for the current fiscal year: [*Provided further*, That the amount of allotment which States and Territories are not prepared to use may be reapportioned among other States and Territories applying therefor for use in the programs for which the funds were originally apportioned.]

MR. [EDGAR W.] HIESTAND [of California]: Mr. Chairman, a point of order.

THE CHAIRMAN:[6] The gentleman will state it.

MR. HIESTAND: I wish to raise the point of order against the proviso on

5. 103 CONG. REC. 4805, 85th Cong. 1st Sess.

6. Aime J. Forand (R.I.).

line 14, page 17, on the ground that it is legislation on an appropriation bill. Coming as it does, it would make a change, you might say, in the formula that has been adopted in the basic act; the formula for the distribution of funds.

THE CHAIRMAN: Does the gentleman from Rhode Island desire to be heard on the point of order?

MR. [JOHN E.] FOGARTY [of Rhode Island]: Mr. Chairman, I have no other recourse but to agree that it is subject to a point of order. But, when you do strike this out, you are going to penalize those States who have the best programs for vocational training.

THE CHAIRMAN: The gentleman concedes the point of order, and the Chair sustains the point of order.

Exemption From Mandatory Funding Levels

§ 36.5 A provision in a general appropriation bill requiring that the mandatory funding levels prescribed by existing law shall not be effective during the current fiscal year was conceded to change existing law and was ruled out as in violation of Rule XXI clause 2.

On July 23, 1970,[7] during consideration in the Committee of the Whole of the Departments of Labor and Health, Education, and Welfare appropriation bill (H.R. 18515), the following point of order was raised:

OFFICE OF ECONOMIC OPPORTUNITY

ECONOMIC OPPORTUNITY PROGRAM

For expenses necessary to carry out the provisions of the Economic Opportunity Act of 1964 (Public Law 88–452, approved August 20, 1964), as amended, $2,046,200,000 . . . . *Provided further*, [That those provisions of the Economic Opportunity Amendments of 1967 and 1969 that set mandatory funding levels shall not be effective during the fiscal year ending June 30, 1971.]

MR. [CARL D.] PERKINS [of Kentucky]: Mr. Chairman, I make a point of order against the language beginning on page 38, line 25, and on page 39 through line 3. The language reads:

> *Provided further*, That those provisions of the Economic Opportunity Amendments of 1967 and 1969 that set mandatory funding levels shall not be effective during the fiscal year ending June 30, 1971.

Mr. Chairman, this is legislation in an appropriation bill and sets aside all the earmarking that we provided for in the Economic Opportunity Authorization Act.

THE CHAIRMAN:[8] Does the gentleman from Pennsylvania desire to be heard on the point of order?

MR. [DANIEL J.] FLOOD [of Pennsylvania]: Mr. Chairman, we concede the point of order.

THE CHAIRMAN: The point of order is conceded and the Chair therefore sustains the point of order.

7. 116 CONG. REC. 25634, 91st Cong. 2d Sess.

8. Chet Holifield (Calif.).

Requiring Priorities in Allocating Funds

§ 36.6 To a paragraph in a general appropriation bill making an appropriation for grants to states for hospital construction, an amendment providing that funds for new obligations must be allotted on a basis of priority to projects most advanced as determined by the several states was ruled out as constituting legislation.

On Apr. 18, 1951,[9] during consideration in the Committee of the Whole of the Department of Labor and Federal Security Agency appropriation bill (H.R. 3709), the following transpired:

The Clerk read as follows:

> Grants for hospital construction: For payments for hospital construction under part C, title VI, of the act, as amended, to remain available until expended, $175,000,000, of which $100,000,000 is for payment of obligations incurred under authority heretofore granted under this head: *Provided,* That allotments under such part C to the several States for the current fiscal year shall be made on the basis of an amount equal to that part of the appropriation granted herein which is available for new obligations.

MR. [FOSTER] FURCOLO [of Massachusetts]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

> Amendment offered by Mr. Furcolo: Page 21, line 13, strike out "$175,000,000" and insert in its place the figure "$250,000,000."

MR. FURCOLO: Mr. Chairman, the amendment I offer is on page 21, line 13, where there will be a substitution of the figure $175,000,000 to make it read $250,000,000. . . .

MR. H. CARL ANDERSEN [of Minnesota]: Mr. Chairman, I offer a substitute.

The Clerk read as follows:

> Amendment offered by Mr. H. Carl Andersen as a substitute for the amendment offered by Mr. Furcolo: Page 21, line 19, after "obligations" strike out the period and insert "*Provided,* That the funds provided for new obligations shall be allotted on a basis of priority to those projects most advanced in the planning and financing as determined by the several States."

MR. [CHRISTOPHER C.] MCGRATH [of New York]: Mr. Chairman, I make the point of order against the substitute that it is legislation on an appropriation bill. . . .

MR. H. CARL ANDERSEN: The Chair will notice in line 16 the provision "That allotments under such part C to the several States" and so forth and so on. If that provision is germane and in order, as it appears to be why should not a further provision as to how the State shall allot the money, based upon the degree of advancement, be germane? The gentleman from Arkansas should either make a point of order against that provision also or withdraw his opposition to mine.

THE CHAIRMAN:[10] The Chair is ready to rule.

---

9. 97 CONG. REC. 4078, 4081, 4082, 82d Cong. 1st Sess.

10. Charles M. Price (Ill.).

After studying the substitute amendment offered by the gentleman from Minnesota, the Chair feels that this is a change in existing law, and therefore sustains the point of order that it is legislation on an appropriation bill.

In regard to the second point raised by the gentleman, the Chair holds that because other legislative language may be permitted to remain in the bill, that does not make in order language adding legislation in violation of the rules.

The Chair, therefore, sustains the point of order submitted by the gentleman from New York.

Changing Allotment in Authorization by Line-item Appropriations

§ 36.7 To a supplemental appropriation bill containing funds for hospitals under the Hill-Burton Act, an amendment making funds available for 35 specific hospitals, itemized individually and by states, was held to change the apportionment formula for hospital construction funds in the basic act and to constitute legislation on an appropriation bill in violation of Rule XXI clause 2.

On May 7, 1970,[11] during consideration in the Committee of the Whole of a supplemental appropriation bill (H.R. 17399), a point of order was raised against the following amendment:

MR. [HENRY C.] SCHADEBERG [of Wisconsin]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Schadeberg: On page 11, between lines 2 and 3, insert the following:

"HEALTH SERVICES AND MENTAL HEALTH ADMINISTRATION HOSPITAL CONSTRUCTION

"For an additional amount for 'Hospital Construction', $8,703,078, for thirty-five hospitals in Kansas, Nebraska, Oklahoma, Arkansas, New Hampshire, Maryland, North Carolina, Wisconsin, and Indiana under title III of the Public Health Service Act as follows:

"The State of Kansas, $1,130,245:

"(1) the Saint Francis Hospital in Topeka, $288,496.

"(2) the Saint John's Hospital in Salina, $68,328.

"(3) the Mount Carmel Hospital in Pittsburg, $273,312. . . .

"The State of Indiana, $250,443:

"(1) the Saint Mary Mercy Hospital in Gary and the Union Hospital in Terre Haute."

MR. [DANIEL J.] FLOOD [of Pennsylvania]: Mr. Chairman, I make a point of order against the amendment on the ground that there is no authorization in law for the appropriations earmarked for these specific hospitals.

THE CHAIRMAN:[12] Does the gentleman from Wisconsin wish to be heard on the point of order?

MR. SCHADEBERG: Only, Mr. Chairman, to suggest that the hospitals that are mentioned have had priority under

11. 116 CONG. REC. 14566, 91st Cong. 2d Sess.

12. James G. O'Hara (Mich.).

the Hill-Burton Act and are under construction.

THE CHAIRMAN: The gentleman from Wisconsin, as the Chair understands it, takes the position that these funds are authorized by the Hill-Burton Act. Is that correct?

MR. SCHADEBERG: They have had construction started under the Hill-Burton Act, yes.

THE CHAIRMAN: Does the gentleman from Pennsylvania desire to respond to that?

MR. FLOOD: Yes, of course, Mr. Chairman. The Hill-Burton Hospital Construction Act authorizes appropriations only to States and to territories under a very, very specific mathematical formula. There is nothing in that law at any place which authorizes appropriations for individual hospitals. As a matter of fact, the law provides that eligibility for individual hospitals shall be determined only by the States. There is no authorization either for appropriations to specific hospitals or for the U.S. Public Health Service to designate by hospital where appropriated funds are to be used.

THE CHAIRMAN: The Chair is prepared to rule on the point of order. The Chair holds that the provisions of title VI of the Public Health Service Act are as described by the gentleman from Pennsylvania. The authorizing legislation provides for appropriations on an allotment formula to the States and does not authorize appropriations in any way for the construction of individual hospitals or permit the selection of individual hospitals for appropriation. The Chair, therefore, is constrained to sustain the point of order on the ground that the proposed amendment constitutes legislation on an appropriation bill.

State Educational Aid—"Hold Harmless" Provision

§ 36.8 Language in a general appropriation bill providing that the amounts to be paid to state educational agencies for certain elementary and secondary school aid during fiscal 1971 shall not be more than amounts made available for those purposes during the preceding fiscal year, and providing that amounts for other categories of such aid in fiscal 1971 shall not be less than amounts available for that purpose in the preceding fiscal year, was held to change the ratable reduction formula in existing law and to impose new duties on an executive official, and was ruled out on a point of order.

On Apr. 7, 1971,[13] during consideration in the Committee of the Whole of the Department of Education appropriation bill (H.R. 7016), a point of order was raised against the following provision:

The Clerk read as follows:

---

13. 117 CONG. REC. 10061, 92d Cong. 1st Sess.

TITLE I—OFFICE OF EDUCATION

ELEMENTARY AND SECONDARY EDUCATION

For carrying out, to the extent not otherwise provided, title I ($1,500,000,000), title II ($85,000,000), title III ($143,393,000), title V–A ($33,000,000), title VII, and section 807 of the Elementary and Secondary Education Act, section 402 of the General Education Provisions Act, and title III–A of the National Defense Education Act of 1958 ($20,000,000), $1,822,218,000: *Provided*, That (1) the amounts made available to State agencies for the purposes of section 103(a) (5), (6), and (7) of title I–A of the Elementary and Secondary Education Act and to the States for the purposes of title I–B shall not be more than the amounts made available in fiscal year 1971 for these purposes and (2) the aggregate amounts made available to each State under title I–A for grants to local educational agencies within that State shall not be less than such amounts as were made available for that purpose in fiscal year 1971.

MR. [JAMES G.] O'HARA [of Michigan]: Mr. Chairman, I make a point of order to the language of the provisos in the paragraph just read, beginning at line 9 on page 2, and running through line 18 on page 2.

THE CHAIRMAN:[14] The gentleman will state his point of order.

MR. O'HARA: Mr. Chairman, my point of order is that the language in the provisos constitutes legislation on an appropriation bill. It provides for adjustments different than those provided in the authorizing legislation, to wit: Section 144 of the Elementary and Secondary Education Act, and that, in addition, the provisos require the exercise of judgmental and discretionary functions on the part of the administrator; imposing those conditions upon him.

For those reasons, Mr. Chairman, I make a point of order against the language of the provisos.

THE CHAIRMAN: Does the gentleman from Pennsylvania desire to be heard on the point of order?

MR. [DANIEL J.] FLOOD [of Pennsylvania]: I do, Mr. Chairman.

Mr. Chairman, this is the classical problem that arises in this bill since we first brought it here a few years ago. It is purely and simply a limitation, and no more and no less. We have heard the point of order before.

I suggest that the point of order not be sustained.

THE CHAIRMAN: The Chair is ready to rule.

The Chair has listened with care to the presentations of the gentleman from Michigan and the chairman of the subcommittee. The Chair has also examined the provisions of title I of the Elementary and Secondary Education Act.

It seems to the Chair that the argument is essentially this: certain appropriations are authorized for programs under title I of the act. The Committee on Appropriations has reduced this amount and has appropriated $1.5 billion. There are within title I of the act certain legislative directions to the Commissioner of Education about how entitlements for the various State educational agencies are to be computed. These are rather complicated and the Chair does not think it necessary to ex-

14. Chet Holifield (Calif.).

plain them in detail. But the Chair does wish to refer to the explicit language of section 144 of the act, and will paraphrase a portion of that section:

> If the sums appropriated for any fiscal year for making the payments provided in this title are not sufficient to pay in full the total amounts which all local and State education agencies are eligible to receive—

And that is the case now before this Committee.

> the amount available for each grant to a state agency under paragraphs (5), (6) or (7) of section 103(a) shall be equal to the maximum grant as computed under such paragraph . . .

The section then provides for certain ratable reductions for other programs under that title.

The Chair has also examined certain precedents relating to the doctrine of limitations on appropriation bills. It is clear from those precedents that while it is proper in an appropriation bill to deny an appropriation or refuse to appropriate for a specific object or program which may be authorized by law, it is not in order, under the guise of a limitation, to impose new duties on an executive officer, to curtail the discretion given that officer under law or to change the law.

The Chair feels that the provision in the bill to which the point of order is directed conflicts with these well-established doctrines. The Chair therefore sustains the point of order.

§ 36.9 Language in a general appropriation bill providing that grants to be paid to states for certain elementary and secondary school aid during fiscal 1973 shall not be less than amounts available for that purpose in the preceding fiscal year was conceded to change the ratable reduction formula in existing law and to impose new duties on executive officials (to determine new minimum amounts) and was ruled out on a point of order.

On June 15, 1972,[15] during consideration in the Committee of the Whole of the Departments of Labor and Health, Education, and Welfare appropriation bill (H.R. 15417), a point of order was raised against the following provision:

The Clerk read as follows:

OFFICE OF EDUCATION

ELEMENTARY AND SECONDARY EDUCATION

For carrying out, to the extent not otherwise provided, title I ($1,597,–500,000), title III ($146,393,000), and title V, Parts A and C ($43,000,000), of the Elementary and Secondary Education Act, $1,786,893,000: *Provided*, That grants to States on behalf of local education agencies under said title I–A shall not be less than grants made to such agencies in the fiscal year 1972.

THE CHAIRMAN:[16] For what purpose does the gentleman from Michigan (Mr. O'Hara) rise?

---

15. 118 CONG. REC. 21104, 92d Cong. 2d Sess.

16. Chet Holifield (Calif.).

MR. [JAMES G.] O'HARA: Mr. Chairman, I make a point of order to the proviso beginning on line 10, page 19, and extending through line 13, page 19.

THE CHAIRMAN: That is as to the language beginning on line 10, with the word "Provided,"?

MR. O'HARA: That is right, Mr. Chairman, and continuing on through line 13 on page 19.

Mr. Chairman, may I be heard on the point of order?

THE CHAIRMAN: The gentleman is recognized.

MR. O'HARA: Mr. Chairman, I make the point of order that the proviso constitutes legislation on an appropriation bill and, therefore, ought to be stricken.

I call the attention of the Chair to the ruling made by the Chair on a very similar point which is found in the Congressional Record, vol. 116, part 3, page 4019.

THE CHAIRMAN: Does the gentleman from Pennsylvania (Mr. Flood) desire to be heard on the point of order?

MR. [DANIEL J.] FLOOD: Mr. Chairman, the same point of order was raised last year, and we concede the point of order.

THE CHAIRMAN: The gentleman from Pennsylvania concedes the point of order.

The point of order is sustained.

Local Education Aid; Changing Allotment Formula

§ 36.10 A provision in a general appropriation bill which changes the legislative formula governing allotment of certain funds to local educational agencies in federally affected areas was conceded and held to be legislation on an appropriation bill in violation of Rule XXI clause 2.

On Feb. 19, 1970,[17] during consideration in the Committee of the Whole of the Departments of Labor and Health, Education, and Welfare appropriation bill (H.R. 15431), a point of order was raised against the following provision:

The Clerk read as follows:

SCHOOL ASSISTANCE IN FEDERALLY AFFECTED AREAS

For carrying out title I of the Act of September 30, 1950, as amended (20 U.S.C., ch. 13), and the Act of September 23, 1950, as amended (20 U.S.C., ch. 19), $440,167,000 of which $425,000,000 shall be for the maintenance and operation of schools as authorized by said title I of the Act of September 30, 1950, as amended, and $15,167,000 which shall remain available until expended, shall be for providing school facilities as authorized by said Act of September 23, 1950: *Provided*, That this appropriation shall not be available to pay local educational agencies pursuant to the provisions of any other section of said title I until payment has been made of 90 per centum of the amounts to which such agencies are entitled pursuant to section 3(a) of said title and 100 per centum of the amounts payable

17. 116 CONG. REC. 4015, 91st Cong. 2d Sess. Compare § 73.1, infra.

under section 6 of said title: *Provided further,* That the amount to be paid to an agency pursuant to said title (except section 7) for the current fiscal year shall not be less, by more than 5 per centum of the current expenditures for free public education made by such agency for the fiscal year 1969, than the amount of its entitlement under said title (except section 7) for the fiscal year 1969.

MR. [JAMES G.] O'HARA [of Michigan]: Mr. Chairman, I rise for the purpose of making a point of order against the second proviso of the paragraph in question, beginning on line 18 and down through line 24, on the ground that it is not a valid limitation, a definitive direction. It is legislation on an appropriation bill and, therefore, forbidden.

THE CHAIRMAN:[18] Does the gentleman from Pennsylvania care to be heard on the point of order?

MR. [DANIEL J.] FLOOD [of Pennsylvania]: Mr. Chairman, this is legislation on an appropriation bill, and I most reluctantly concede.

THE CHAIRMAN: The Chair is prepared to rule. The point of order is sustained.

Changing Computation Formula in Law

§ 36.11 To separate paragraphs in a general appropriation bill, both making appropriations for payments to local educational agencies, similar amendments providing bases for computation of the recipients' contributions and for computation of the federal payments different from the criteria specified by the law authorizing such payments were conceded and held to constitute legislation in violation of the rules.

On Apr. 18,[19] during consideration in the Committee of the Whole of the Department of Labor and Federal Security Agency appropriation bill (H.R. 3709), a point of order was raised against the following amendments:

The Clerk read as follows:

Payments to school district: For payments to local educational agencies for the maintenance and operation of schools as authorized by the act of September 30, 1950 (Public Law 874), $28,000,000.

MR. [WILLIAM F.] NORRELL [of Arkansas]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Norrell: On page 15, line 9, strike out the period, insert a colon in lieu thereof and the following: "Provided, That, for the purposes of this appropriation, (1) the local contribution rate computed for any local educational agency under section 3 of such act of September 30, 1950, shall be not less than 80 percent and not more than 120 percent of the national average local contribution rate during the fiscal year ending June 30, 1950, and (2) the current expenditures per child determined for any such agency under section 4 of such

18. Chet Holifield (Calif.).

19. 97 CONG. REC. 4074, 82d Cong. 1st Sess.

act of September 30, 1950, shall be not less than 80 percent and not more that 120 percent of the national average current expenditures per child for the purpose of providing free public education during the fiscal year ending June 30, 1950."

MR. [JOHN E.] FOGARTY [of Rhode Island]: Mr. Chairman, I make a point of order against the amendment on the ground that it is legislation on an appropriation bill. . . .

MR. NORRELL: Mr. Chairman, I ask unanimous consent that my other amendment on page 16, line 3, may be considered at this time, for I am sure the gentleman from Rhode Island will make a point of order against it also on the same grounds. I make this request in order that my remarks may be directed to both amendments at the same time.

THE CHAIRMAN: [20] Is there objection to the request of the gentleman from Arkansas?

There was no objection.

THE CHAIRMAM: The Clerk will report the second amendment offered by the gentleman from Arkansas.

The Clerk read as follows:

Amendment offered by Mr. Norrell: On page 16, line 3, strike out the period, insert in lieu thereof a colon and the following: *"And provided further,* That in the case of any application by a local educational agency approved after July 1, 1951, for payment under section 202 of such act, the amount made available by the Commissioner of Education out of this appropriation shall not exceed $500 times the number of children with respect to whom such agency is entitled to receive payment under such section 202."

MR. FOGARTY: Mr. Chairman, I make a point of order against this amendment also, on the ground that it is legislation on an appropriation bill; and I reserve both points of order, Mr. Chairman. . . .

MR. NORRELL: Mr. Chairman, I am not going to consume the entire 5 minutes.

Mr. Chairman, I have consulted with the House Parliamentarian with regard to both these amendments. They deal with the law that we enacted last year regarding the school-aid program in defense areas both as to construction and maintenance.

I admit that my amendments, if adopted, would change the basic law of the land regarding these matters and, therefore, they are subject to points of order; this is legislation on an appropriation bill. But the facts are that since the enactment of this law last year certain weaknesses have arisen which should have the attention of this Congress. . . .

THE CHAIRMAN: The Chair sustains the point of order against both amendments.

Impacted Aid; No Funds Until Apportionment Made in Certain Manner

§ Sec. 36.12 A provision in an amendment to a general appropriation bill denying the use of any funds for impacted school aid until the official allocating the funds makes an apportionment thereof contrary to the formula prescribed by existing

20. Charles M. Price (Ill.).

law was held to impose additional duties upon that official, thus changing existing law and constituting legislation on an appropriation bill.

On Apr. 14, 1970,[1] during consideration in the Committee of the Whole of the Education Department appropriation bill (H.R. 16916), a point of order was raised against the following amendment:

MR. [ROBERT H.] MICHEL [of Illinois]: Mr. Chairman, I offer an amendment in the nature of a substitute.

The Clerk read as follows:

Amendment in the nature of a substitute offered by Mr. Michel: Strike all after the enacting clause and insert:

TITLE I—OFFICE OF EDUCATION

SCHOOL ASSISTANCE IN FEDERALLY AFFECTED AREAS

For carrying out title I of the Act of September 30, 1950, as amended (20 U.S.C., ch. 13), and the Act of September 23, 1950, as amended (20 U.S.C., ch. 19), $440,000,000 of which $425,000,000 shall be for the maintenance and operation of schools as authorized by said title I of the Act of September 30, 1950, as amended, and $15,000,000 which shall remain available until expended, shall be for providing school facilities as authorized by said Act of September 23, 1950: *Provided,* That this appropriation shall not be available to pay local educational agencies pursuant to the provisions of any other section of said title I until payment has been made of 90 per centum of the amounts to which such agencies are entitled pursuant to section 3(a) of said title and 100 per centum of the amounts payable under section 6 of said title. . . .

MR. [JAMES G.] O'HARA [of Michigan]: Then I make a point of order against the amendment offered by the gentleman from Illinois.

THE CHAIRMAN:[2] The Chair will hear the gentleman on the point of order.

MR. O'HARA: Mr. Chairman, the point of order against the amendment offered by the gentleman from Illinois is that it contains legislation in an appropriation bill, to wit, the language on page 2, lines 6 to 12 is clearly legislation on an appropriation bill providing for different dispositions of funds under those sections than are provided by law. Therefore I make a point of order against the amendment offered by the gentleman from Illinois. . . .

MR. [DANIEL J.] FLOOD [of Pennsylvania]: Mr. Chairman, it is as plain as the nose on my face, and I have got a nose, that this is clearly a limitation upon the expenditure of funds. That is clearly it. I suggest the point must be overruled.

THE CHAIRMAN: Does the gentleman from Michigan desire to be heard further?

MR. O'HARA: Mr. Chairman, I would like to be heard. I would like to say first, Mr. Chairman, if the proviso to which I have referred authorizes the use on a different formula than that provided in the basic authorizing legislation, and I do not believe that the proviso is a limitation or retrenchment

1. 16 CONG. REC. 11676, 11677, 91st Cong. 2d Sess.

2. Chet Holifield (Calif.).

of appropriations which would be an expansion, the proviso is neither a limitation nor retrenchment of appropriations, because it permits payment to be made in excess of the payments authorized by the above quoted section of Public Law 81–874.

It may be helpful to the Chairman and to my colleagues in understanding the point that the reference contained in section 5(c) just quoted, that various other sections of entitlements to payments are to the so-called familiar references to categories A and B children under impacted aid.

THE CHAIRMAN: The Chair is prepared to rule. The gentleman from Michigan (Mr. O'Hara), has raised a point of order against the proviso appearing in the amendment in the nature of a substitute and referred to in the original bill as the proviso on page 2 of the bill on the ground that it constitutes legislation on an appropriation bill in violation of clause 2, rule XXI. That proviso would make appropriations in the bill unavailable for payment to local educational agencies pursuant to the provisions of any other section of title I of the act of September 30, 1950—which authorizes school assistance in federally affected areas—until payment has been made of 90 percent of entitled allotments pursuant to section 3(a) of said title I and of 100 percent of amounts payable under section 6 of that title. The gentleman from Michigan contends that such a requirement for payments of funds propriated in this bill has the effect of changing the allotment formula in the authorizing legislation of funds for "category A students," and is therefore legislation on an appropriation bill prohibited by clause 2, rule XXI.

On June 26, 1968, during consideration of the Department of Labor and Health, Education, and Welfare appropriation bill for fiscal year 1969, the Chair—the gentleman now occupying it—sustained a point of order against an amendment prohibiting the use of funds in the bill for educationally deprived children until there was made available therefrom for certain local educational agencies an amount at least equal to that allotted in the preceding year, since that amendment would have required the Commissioner of Education to make an apportionment of appropriated funds contrary to the formula prescribed by existing law, thus imposing additional duties on that official and changing existing law.

The Chair feels that that decision is controlling in this instance. To make the appropriations authorized under certain sections of the "impacted school aid" legislation contingent upon allotment of certain percentages of entitled funds under other sections of that authorizing legislation is to impose additional duties on the official making the allotment and to change the enforcement formula in the authorizing legislation is in violation of clause 2, rule XXI.

The Chair therefore sustains the point of order.

Rural Electrification Grants; Changing Loan Program to Grant

§ 36.13 To a general appropriation bill making appropriations for rural electrification loans, an amendment earmarking a portion of the

funds for nonrepayable grants to REA borrowers in Alaska was conceded to be authorized by law and was ruled out as legislation.

On May 20, 1964,[3] during consideration in the Committee of the Whole of the Department of Agriculture appropriation bill (H.R. 11202), a point of order was raised against the following amendment:

MR. [ROBERT H.] MICHEL [of Illinois]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Michel: Page 26, line 22, after the word "program", insert the following: "Provided, That not more than $5,300,000 of the foregoing amounts shall be made available to the borrowers of the Rural Electrification Administration in Alaska for the repair, rehabilitation or reconstruction of all their facilities and properties damaged, destroyed, or dislocated as a result of the earthquakes of March 1964, and provided further that any amounts so made available and used shall not be repayable by the borrowers."

MR. [JAMIE L.] WHITTEN [of Mississippi]: Mr. Chairman, I reserve a point of order. . . .

THE CHAIRMAN:[4] The gentleman will state his point of order.

MR. WHITTEN: Mr. Chairman, I make the point of order that this is legislation on an appropriation bill. There is no authority in law for making this direct grant from the REA program. May I point out under the basic law the committee is limited to fixing a ceiling upon what the REA may do under the basic act setting up their authorities, obligations, and duties. This would in effect be a direct grant from the REA which borrows from the Treasury, and quite clearly, in my mind, it would be legislation. . . .

THE CHAIRMAN: Does the gentleman from Illinois desire to be heard on the point of order?

MR. MICHEL: Mr. Chairman, I realize as a member of the committee that we cannot legislate on an appropriation bill and that it is subject to a point of order. If the chairman persists in it, naturally, I would have to give way.

THE CHAIRMAN: In view of the statement of the gentleman from Illinois, the point of order is sustained.

Higher Education Funds: Funding For Program Not Authorized Unless Others Funded First

§ 36.14 Where existing law authorizing programs of higher education assistance provided that no payments for any fiscal year shall be made for a certain category (4) unless funds have been appropriated for three other student programs for that fiscal year, language in a general appropriation bill containing funds for category (4) which

3. 110 CONG. REC. 11424–26, 88th Cong. 2d Sess.

4. Eugene J. Keogh (N.Y.).

would remain available during a subsequent fiscal year for which no funds for categories (1)–(3) were provided was conceded to change the priority formula in the authorizing legislation and was ruled out in violation of Rule XXI clause 2.

On June 27, 1974,[5] during consideration in the Committee of the Whole of the Departments of Labor and Health, Education, and Welfare appropriation bill (H.R. 15580), a point of order was raised and sustained as indicated above:

> For carrying out, to the extent not otherwise provided, titles I, III, IV, section 745 of title VII, and parts A, B, C, and D of title IX, and section 1203 of the Higher Education Act . . . section 421 of the General Education Provisions Act, and Public Law 92-506 of October 19, 1972, $2,145,271,000 . . . of which $638,500,000 shall remain available through June 30, 1977, $315,000,000 for subsidies on guaranteed student loans shall remain available until expended: . . .
>
> MRS. [EDITH] GREEN of Oregon: Mr. Chairman, I make a point of order on the language found on page 18, line 4, beginning with the words "of which" through line 5 through "1977,".
>
> So the language I would make a point of order against, Mr. Chairman, would read: "of which $638,500,000 shall remain available through June 30, 1977,". My point of order, Mr. Chairman, is that this appropriates funds for the basic opportunity grants through June 30, 1977. The law requires, and I cite, Mr. Chairman, in the Education Amendments Acts of 1972 this language.
>
> No payments may be made on the basis of entitlements—
>
> Which is the basic opportunity grants—
>
> established under this subpart during any fiscal year unless—
>
> And then the language continues—
>
> funds have been appropriated for economic opportunity grants, work study, and National Defense Education Act.
>
> This language was very carefully drawn to protect those three student aid programs. The language which we find in the bill in effect provides payments for the entitlements for a year, the year ending June 30, 1977, the school year 1976–77, a year in which no funds are appropriated for the three other student financial aid programs which are required under the law.
>
> MR. [DANIEL J.] FLOOD [of Pennsylvania]: Mr. Chairman, we will concede that point of order.
>
> THE CHAIRMAN:[6] The point of order is sustained.

Economic Development; Mandating Obligation of Funds for Unauthorized Program

§ 36.15 An amendment to a general appropriation bill

5. 120 CONG. REC. 21670, 21671, 93d Cong. 2d Sess.

6. James C. Wright, Jr. (Tex.).

providing that not less than a specific sum shall be used for a particular purpose was held to violate Rule XXI clause 2, where its proponent could not show that existing law mandated such an expenditure.

On June 18, 1976,[7] H.R. 14239 (Departments of State, Justice, Commerce, and the Judiciary appropriation bill for fiscal 1977), was under consideration, which provided in part:

> For economic development assistance as authorized by titles I, II, III, IV, and IX of the Public Works and Economic Development Act of 1965, as amended, and title II of the Trade Act of 1974, $300,000,000.

An amendment was offered, as follows:

> MR. [PHILIP E.] RUPPE [of Michigan]: Mr. Chairman, I offer an amendment.
>
> The Clerk read as follows:
>
> Amendment offered by Mr. Ruppe: In Title III, page 27, line 2, strike out "$300,000,000," and insert in lieu thereof: "$329,500,000, of which not less than $77,000,000 shall be used for economic adjustment as authorized by title IX of the Public Works and Economic Development Act of 1965, as amended.". . .
>
> MR. [JOHN M.] SLACK [of West Virginia]: Mr. Chairman, the amendment would violate clause 2 of rule XXI which provides:
>
> No appropriation shall be reported in any general appropriation bill, or be in order as an amendment thereto, for any expenditure not previously authorized by law. . . .
>
> The rule adopted earlier, waiving all points of order against certain provisions in the bill for failure to comply with the provisions of clause 2, rule XXI, applies only to those provisions in the bill. The waiver does not apply to amendments which would add additional provisions.
>
> This amendment, Mr. Chairman, would add a provision to the bill earmarking $77 million for economic adjustment under title IX of the Public Works and Economic Development Act of 1965, as amended. Extension of that legislation which is required for fiscal year 1977 has not been enacted. . . .
>
> MR. RUPPE: . . . Mr. Chairman, my amendment would increase the funding level of title IX of this section from $47.5 to $77 million. It is my understanding that that section does fund economic development assistance for titles I, II, III, IV, and IX of the Public Works and Economic Development Act of 1965.
>
> THE CHAIRMAN:[8] The Chair is ready to rule.
>
> If the amendment of the gentleman merely changed the unauthorized figure permitted to remain in the appropriation bill, it would be in order; but the amendment does mandate the expenditure of not less than a certain amount of money for a purpose which has not been authorized and as such constitutes legislation in an appropriation bill.
>
> The Chair sustains the point of order.

7. 122 CONG. REC. 19297, 94th Cong. 2d Sess.

8. Otis G. Pike (N.Y.).

Changing Allocation Formula; Distribution Set in Authorizing Law Changed

§ 36.16 Where existing law required allocation of 90 percent of appropriations for public service jobs in accordance with a distribution formula and permitted allotment of the remaining 10 percent at the discretion of an executive official, an amendment to a general appropriation bill requiring that a certain amount therein shall be available only to provide railroad maintenance jobs by contract with private employers was ruled out (1) as not specifically authorized as a public service program, and (2) as directly changing the allocation formula and interfering with executive discretion contained in that law.

On Mar. 12, 1975,[9] during consideration in the Committee of the Whole of H.R. 4481 [the Emergency Employment Appropriation Act of 1975], a point of order was sustained against an amendment to the following bill text:

The Clerk read as follows:

TEMPORARY EMPLOYMENT ASSISTANCE

For an additional amount for "Temporary employment assistance", $1,625,000,000, to remain available until December 31, 1975.

MR. [SAMUEL L.] DEVINE [of Ohio]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Devine: Page 7, line 6, strike out the period and insert in lieu thereof the following: "; of which amount $250,000,000 shall be available only for use by State and local prime sponsors to provide emergency jobs for unemployed workers to perform needed railroad maintenance of way services pursuant to contracts with railroads located within the geographical jurisdiction of such sponsors."

MR. [GEORGE H.] MAHON [of Texas]: Mr. Chairman, I make a point of order against the amendment on the ground that there is no authorization for this action and it violates clause 2 of rule XXI. . . .

MR. DEVINE: . . . I recognized when this amendment would be offered it might be construed as legislation on an appropriation measure, but I have gone back to the act and I have looked at the act. The purpose of the act we passed in 1946, the Employment Act, was consistent with those needs and obligations and other essential considerations of national policy for the purpose of creating and maintaining, in a manner calculated to foster and promote free competitive enterprise and the general welfare, conditions under which there will be afforded useful employment opportunities—and I repeat, useful employment opportunities. That is the purpose of the act.

9. 121 CONG. REC. 6338, 6339, 94th Cong. 1st Sess.

What we are doing in this amendment is providing useful employment opportunities—not leaf raking and not make work jobs, but useful employment opportunities.

The whole purpose of the bill is to provide funds for public service jobs. That is exactly the purpose of the amendment, except it earmarks that. In my opinion, Mr. Chairman, this does not violate the rules and I think the point of order should be overruled. . . .

THE CHAIRMAN:[10] The Chair is prepared rule.

The amendment specifies that this quarter billion dollars shall be available for use only by State and local prime sponsors to provide emergency jobs for unemployed workers to perform railroad maintenance. The Chair has examined Public Law 93–567, and there is no specific authorization for such purpose. The Chair finds that the proposed amendment further changes the allocation formula contained in Public Law 93–567, which is described on pages 34 and 35 of the report, and further interferes with the discretion given the Secretary under section 603(b) of the public law as to the utilization of the final 10 percent of the authorized amounts. In chapter 26, section 6 of "Deschler's Procedure," it provides very clearly that there is ample precedent that such reallocations in appropriation bills are legislation, and the point of order is sustained.

Veterans' Preference in Job Training Based on Duration of Unemployment

§ 36.17 A proviso in a general appropriation bill specifying that an appropriation for veterans' job training be obligated on the basis of those veterans unemployed the longest time, was conceded to be legislation where existing law did not require that allocation of funds, and was ruled out as in violation of Rule XXI clause 2(c).

On Oct. 5, 1983,[11] during consideration of H.R. 3959 (supplemental appropriations, fiscal 1984), a point of order was raised against the following provision:

The Clerk read as follows:

For payment of expenses as authorized by the Emergency Veterans' Job Training Act of 1983 (Public Law 98–77), $150,000,000, to remain available until September 30, 1986: *Provided,* That $25,000,000 of the amount appropriated shall not become available for obligation until July 1, 1984: Provided further, That such $25,000,000 shall be obligated on the basis of those veterans unemployed the longest period of time. . . .

MR. [MARVIN] LEATH of Texas: Mr. Chairman, I make a point of order that the first and second provisos in the paragraph under the heading "Veterans Job Training," page 2 lines 21 through 25, constitute legislation on an appropriation bill and are not in order under rule XXI, clause 2. . . .

MR. [Edward P.] BOLAND [of Massachusetts]: Mr. Chairman, I concede the point of order.

---

10. Jack Brooks (Tex.).

11. 129 CONG. REC. ——, 98th Cong. 1st Sess.

THE CHAIRMAN:[12] The point of order is conceded.

Contravening Distribution Formula in Authorization

§ 36.18 Where existing law (42 USC § 3056d) required an allocation of funds appropriated for community service employment programs for older Americans between national contractors and state agencies at a designated percentage by setting a ceiling on allocations to national contractors, language in a paragraph of a general appropriation bill directing the availability of funds to national contractors above the percentage ceiling was held to be legislation changing the distribution formula in existing law.

On July 29, 1982,[13] during consideration in the Committee of the Whole of H.R. 6863 (supplemental appropriations, fiscal 1982), a point of order was sustained against a provision therein, as follows:

THE CHAIRMAN:[14] Are there any points of order with regard to this chapter?

MR. [MARIO] BIAGGI [of New York]: Mr. Chairman, I raise a point of order against the language in the paragraph entitled "Community Service Employment for Older Americans." . . .

The portion of the bill to which the point of order relates is as follows:

COMMUNITY SERVICE EMPLOYMENT FOR OLDER AMERICANS

For an additional amount for "Community service employment for older Americans", $210,572,000, of which $168,457,600 shall be for national grants or contracts with public agencies and public or private nonprofit organizations under paragraph (1)(A) of section 506(a) of the Older Americans Act of 1965, as amended, and $42,114,400 shall be for grants to States under paragraph (3) of section 506(a) of said Act. . . .

Mr. Chairman, this is a clear example of legislating on an appropriations bill which is expressly prohibited under clause 2, rule XXI of the House. Very simply, Mr. Chairman, this language clearly changes the application of existing law for the title V program through the appropriations process. The committee bill ignores the language in the authorizing statute, section 506 of the Older Americans Act as amended, by changing the current formula for distribution of funds to national contractors, increasing it to 80 percent with the remaining 20 percent to be provided to the States. Under current law, as reaffirmed by last year's reauthorization of the Older Americans Act, the distribution of funds between national contractors and States is 76 percent and 24 percent, respectively. . . .

MR. [NEAL] SMITH of Iowa: . . . Mr. Chairman, I point out that under the

---

12. Martin Frost (Tex.).

13. 128 CONG. REC. 18637, 18638, 97th Cong. 2d Sess.

14. George E. Brown, Jr. (Calif.).

legislation that the gentleman refers to there is an attempt made apparently to say that if more than a certain amount is appropriated, then the Secretary shall reserve part of that for another purpose. It does not prohibit the Congress from making the appropriation. . . .

THE CHAIRMAN: The Chair is prepared to rule.

The gentleman from New York (Mr. Biaggi) makes a point of order that the language on page 34, line 6, sets aside for national grants or contracts a figure which is in excess of that specified in the law as being permissible for national grants or contracts.

Under the precedents it is not in order in a general appropriation bill to direct that certain funds therein shall be distributed without regard to the provisions of the authorizing legislation.

The Chair is of the opinion that the law cited by the gentleman from New York (42 U.S.C. 3056d) is inconsistent with this appropriation allocation. This language has the effect of contravening the distribution formula on that law. The Chair upholds the point of order.

Commodity Credit Corporation; Directing Minimum Spending

§ 36.19 A paragraph in a general appropriation bill directing that not less than a specified sum be available for a certain purpose was ruled out as legislation in violation of Rule XXI clause 2, constituting a direction to spend a minimum amount, rather than a negative limitation.

On July 29, 1982,[15] during consideration in the Committee of the Whole of the bill H.R. 6863 (supplemental appropriations, fiscal 1982), a point of order was sustained against the following provision:

The Clerk read as follows:

As authorized by section 301 of Public Law 95–279, $5,000,000,000 shall be available to the Commodity Credit Corporation for necessary expenses in carrying out its authorized programs, to remain available without regard to fiscal year limitations: *Provided,* That not less than $500,000,000 of this amount shall be available for export credit loans as authorized by the Charter of the Commodity Credit Corporation and the export authorities conferred upon the Corporation by the Corporation's charter shall be controlling without restriction. . . .

MR. [SILVIO O.] CONTE [of Massachusetts]: Mr. Chairman, I raise a point of order on that section. . . .

On line 10, not less than $500 million of this amount shall be available for export credit loans, and so forth, is forcing the agency to spend a minimal amount. . . .

MR. [JAMIE L.] WHITTEN [of Mississippi]: Mr. Chairman, this is simply an earmarking of a given amount that is appropriated in the bill, and it is within the rule.

Mr. Chairman, this goes back to the charter of the Corporation, the Com-

15. 128 CONG. REC. 18623, 97th Cong. 2d Sess.

modity Credit Corporation. That being true under that charter, it has authority to do this, and we are just directing that it use the authority that already exists. So, it is a directive for the proper use of funds in line with the authorization which is granted in the charter of the Commodity Credit Corporation.

MR. CONTE: The gentleman should have worded his language as "not to exceed $500 million." Furthermore, in line 13, ". . . and the export authorities conferred upon the Corporation by the Corporation's charter shall be controlling without restriction." That requires a positive act by the agency, and therefore a point of order lies against it.

MR. WHITTEN: I present the statement of the section that makes the authorization to which this applies. It appears in title 15, on page 1203, and is section 1692 where it first appears.

> In the fulfillment of its purposes and in carrying out its annual budget programs submitted to and approved by the Congress pursuant to the Government Corporation Control Act [31 U.S.C. 841 et seq.], the Corporation is authorized to use its general powers only to—
>
> (a) Support the prices of agricultural commodities through loans, purchases, payments and other operations.
>
> (b) Make available materials and facilities required in connection with the production and marketing of agricultural commodities.
>
> (c) Procure agricultural commodities for sale to other Government agencies, foreign governments and domestic, foreign, or international relief or rehabilitation agencies, and to meet domestic requirements.
>
> (d) Remove and dispose of or aid in the removal or disposition of surplus agricultural commodities.
>
> (e) Increase the domestic consumption of agricultural commodities by expanding or aiding in the expansion of domestic markets or by developing or aiding in the development of new and additional markets, marketing facilities, and uses for such commodities.
>
> (f) Export or cause to be exported, or aid in the development of foreign markets for agricultural commodities.

That being the authority they have, it is simply a matter of advising what to do within the authority already granted.

THE CHAIRMAN:[16] The Chair is ready to rule.

The Chair has heard the point of order and listened to the arguments on both sides. It is the Chair's intention to sustain the point of order on the grounds that this is not a negative limitation on an expenditure, but is a legislative direction to the agency involved.

Transferring Defense Funds for Local Use

§ 36.20 A paragraph in a general appropriation bill transferring available funds from a department to another department and directing the use to which those funds must be put was conceded and held to be legislation in violation of Rule XXI clause 2 as well as a reappropriation violating Rule XXI clause 6.

16. George E. Brown, Jr. (Calif.).

On Dec. 8, 1982,[17] during consideration in the Committee of the Whole of the Department of Defense appropriation bill, a point of order was sustained to a portion of that bill, as follows:

MR. [WILLIAM] NICHOLS [of Alabama]: Mr. Chairman, I have a point of order.

The portion of the bill to which the point of order relates is as follows:

Sec. 793. Of the funds available to the Department of Defense, $200,000 shall be transferred to the Department of Education which shall grant such sum to the Board of Education of the Highland Falls-Fort Montgomery, New York, central school district. The funds transferred by this section shall be in addition to any assistance to which the Board may be entitled under subchapter 1, chapter 13 of Title 20 United States Code. . . .

. . . I make a point of order against section 793, which provides appropriations without authorization, and constitutes legislation on an appropriation bill, which I believe to be in violation of clause 2 of rule XXI. . . .

MR. [JOSEPH P.] ADDABBO [of New York]: . . . Mr. Chairman, the section is subject to a point of order, but this is a special case. These are children of men and women at West Point who are attending the public schools. If these funds are not allocated, the school will close and there will be no school for these young people to attend. . . .

THE CHAIRMAN PRO TEMPORE:[18] The gentleman insists on his point of order, and the Chair is ready to rule.

The Chair will have to rule that, for the reasons conceded, the point of order to section 793 as stated by the gentleman from Alabama (Mr. Nichols) is sustained.

Indian Education; Mandating Expenditures Where Law Grants Discretion

§ 36.21 To a paragraph of a general appropriation bill containing funds for the operation of Indian programs, an amendment providing that Indian tribes shall receive at least 90 percent of the amount under an educational service contract for the ensuing fiscal year as was received under the existing contract (thereby mandating expenditures) was ruled out as legislation in violation of Rule XXI clause 2, where it was shown that existing law permitted the cancellation of such contracts upon a finding of unsatisfactory performance.

On June 25, 1976,[19] it was held that, where existing law confers discretionary authority upon a federal official to cancel contracts, an amendment to a general appropriation bill requiring the expenditure of a certain amount

17. 128 CONG. REC. 29449, 29450, 97th Cong. 2d Sess.

18. Don Bailey (Pa.).

19. 122 CONG. REC. 20557, 94th Cong. 2d Sess.

under those contracts (a "hold-harmless" provision) is legislation and subject to a point of order. On that day, during consideration in the Committee of the Whole of the Department of the Interior appropriation bill (H.R. 14231), a point of order was sustained against the following amendment:

MR. [WILLIAM A.] STEIGER of Wisconsin: Mr. Chairman, I offer an amendment.

(The portion of the bill to which the amendment relates is as follows:)

For expenses necessary to provide education and welfare services for Indians, either directly or in cooperation with States and other organizations, including payment (in advance or from date of admission), of care, tuition, assistance, and other expenses of Indians in boarding homes, institutions, or schools . . . and for the general administration of the Bureau of Indian Affairs, including such expenses in field offices, $602,610,000, of which not to exceed $32,952,000 for assistance to public schools shall remain available for obligation until September 30, 1978; and includes expenses necessary to carry out the provisions of sections 8 and 19(a) of Public Law 93–531, $2,040,000 to remain available until expended, of which not more than $250,000 shall be available for payments pursuant to section 8(e) of said Act: *Provided*, That the Secretary of the Interior is directed, upon the request of any tribe, to enter into a contract or contracts with any tribal organization of any such tribe for the provision of law enforcement, if such contract proposal meets the criteria established by Public Law 93–638.

The Clerk read as follows:

Amendment offered by Mr. Steiger of Wisconsin: Page 18, line 1, after "1978" insert: "(*Provided, however*, That no Indian tribe, tribal organization, or State education agency having a contract for educational services with the Secretary of the Interior under title I of the Indian Self-Determination and Education Assistance Act shall receive an amount under such contract during the fiscal year ending September 30, 1977, which is less than 90 per centum of the amount received under such contract during the fiscal year ending June 30, 1976, and the transitional quarter ending September 30, 1976)."

MR. [SIDNEY R.] YATES [of Illinois]: . . . Mr. Chairman, I raise a point of order against the amendment offered by the gentleman of Wisconsin. Mr. Chairman, Mr. Steiger's amendment requires the Secretary of the Interior to enter into contracts in fiscal year 1977 for educational services which are not less than 90 percent of the amount received under contract in fiscal year 1976. This amendment changes existing law and is legislation on an appropriation bill.

Section 109 of title I of Public Law 93–638, the Indian Self Determination and Education Assistance Act allows the Secretary of Interior to cancel contracts when he determines that the Tribal organization's performance is not satisfactory. This amendment precludes the Secretary from cancelling any fiscal year 1976 contract and states they must be funded in fiscal year 1977 at not less than 90 percent of the fiscal year 1976 level. . . .

MR. STEIGER of Wisconsin: . . . Mr. Chairman, the amendment is nothing more than a proviso which would restrict what would happen under the

Johnson-O'Malley Act. It is similar in concept and in language to a provision that was in last year's appropriation bill, where a hold-harmless provision was, in fact, provided for very similar to this provision.

It does seem to me that when we attempt, as this does, simply to restrict within the framework of the Johnson-O'Malley Act and the framework of the funds under this bill, that it is not, in fact, legislation. It does not create any additional responsibility for the Bureau of Indian Affairs and is simply a clarification of what could happen when we go down this road. . . .

THE CHAIRMAN:[20] The Chair is prepared to rule.

The point of order made by the gentleman from Illinois (Mr. Yates) that the amendment constitutes legislation on an appropriation bill appears to be well taken. The Chair has examined section 109 of Public Law 93–638.

The amendment definitely does not amount to a limitation of funds in the pending bill. It is legislation on an appropriation bill. The fact that it appeared in a prior appropriation act would not protect the amendment at this time . . . and the Chair must sustain the point of order.

Elementary Education; "Hold Harmless" Provision Mandating Expenditure Level

§ 36.22 A "hold harmless" proviso in the education division appropriation bill, the effect of which was to prevent states from receiving less in the next fiscal year than they had received in the current fiscal year, there being no similar provision in the authorizing legislation, was conceded to be legislation and ruled out.

On Apr. 16, 1975,[1] language in a general appropriation bill providing that grants to be paid to states for certain elementary and secondary school aid during fiscal 1976 shall not be less than amounts available for that purpose in the preceding fiscal year was conceded to change the ratable reduction formula in existing law and was ruled out as legislation in violation of Rule XXI clause 2.[2] The provision in question and point of order were as follows:

The Clerk read as follows:

Provided further, That the amount made available to each State from the sum heretofore appropriated for the fiscal year 1976 or from the sum appropriated herein for the fiscal year 1977 for title IV, part C of the Elementary and Secondary Education Act shall not be less than the amount made available for comparable purposes for fiscal year 1975.

MR. [JOSEPH P.] ADDABBO [of New York]: Mr. Chairman, I raise a point of

20. Walter Flowers (Ala.).

1. 121 CONG. REC. 10357, 94th Cong. 1st Sess.

2. Such language, in effect, mandates expenditures and is thus subject to a point of order. See also *Deschler's Procedure,* Ch. 26, §§ 16.4, 16.5.

order that the language as it appears on page 3, line 1, through line 6, is legislation on an appropriation bill. . . .

MR. [DANIEL J.] FLOOD [of Pennsylvania]: . . . This is what is sometimes referred to as the "hold harmless" provision, and the effect, of course, of this language is simply to prevent the reductions in State grants from last year. I will make that very clear. I will say the formula for making these distributions will certainly change under that new consolidated program enacted last year, and there are about 20 States now that will receive less under the so-called new consolidated program than they received under the previous program.

The language in the bill was an attempt to remedy that very situation. This is the effect of the language.

Of course, unfortunately, under title IV, part C, of the Elementary and Secondary Education Act it does not specifically authorize a "hold harmless" provision. We will have to concede the point of order, but this is just so the Members will know.

THE CHAIRMAN:[3] The gentleman from Pennsylvania concedes the point of order, and the Chair sustains the point of order. Therefore, the language appearing on page 3, lines 1 through 6, is stricken from the bill.

§ 37. Grant or Restriction of Contract Authority

The precedents in this section, for the most part, pre-date the Congressional Budget Act of 1974. Section 401(a) of that act (Pub. L. No. 93–344) prohibits the inclusion of new contract, spending or borrowing authority in legislative bills unless such authority is limited to the extent or in amounts provided in appropriation acts. Therefore, since the enactment of that law, the inclusion of proper limiting language in a general appropriation bill, if specifically permitted by law, would not render that language subject to a point of order under Rule XXI clause 2, since it would no longer "change existing law."

Grant of Contract Authority

§ 37.1 Language in a general appropriation bill authorizing a governmental agency to enter into contracts was held to be legislation and not in order.

On Jan. 18, 1940,[4] during consideration in the Committee of the Whole of the independent offices appropriation bill (H.R. 7922), a point of order was raised against the following provision:

The Clerk read as follows:

In addition to the contract authorizations of $115,000,000 contained in the Third Deficiency Appropriation Act, fiscal year 1937, and

3. James C. Wright, Jr. (Tex.).

4. 86 CONG. REC. 508, 509, 76th Cong. 3d Sess.